



U.S. Department of Justice  
United States Marshals Service  
*Asset Forfeiture Division*

Washington, DC 20530-1000

October 11, 2016

Mr. Kenneth A. Jowdy  
Diamante Cabo San Lucas, LLC  
131 Deer Hill Avenue, Suite B  
Danbury, CT 06811

**SENT VIA EMAIL AND FEDEX**

Re: Diamante Cabo San Lucas, LLC Site Visit

Dear Mr. Jowdy:

On August 21, 2015 the United States District Court for the Eastern District of New York issued a Protective Order (the "Order") in the criminal case against Philip Kenner restraining all rights, title and interest in Diamante Cabo San Lucas, LLC (the "Interest") to the United States. A copy of the Order is attached. Pursuant to the Order, the United States Marshals Service (the "USMS") has the authority to inspect the subject interest and its books and records.

As a managing member, we are seeking to tour the project site and to engage in a cooperative discussion with you to understand the financial condition and management operations of the company. Exhibit "A" below outlines an example of our questions for discussion. We request the accountant(s) who constructed the financial statements be present during our discussion. In addition, we are requesting that you send beforehand the financial information requested in Exhibit "B" below. All information may be sent electronically, or if by mail to the noted address.



We will be on site the week of October 24, 2016. Please confirm your availability and cooperation with this request by October 14, 2016. If you and the accountant(s) are unavailable, please propose an alternative week in your response.

Sincerely,

A handwritten signature in black ink that reads "Joanna P. Summers". The signature is fluid and cursive, with the first name "Joanna" being the most prominent part.

Joanna P. Summers  
Complex Assets Unit  
Asset Forfeiture Division

cc: Diane Beckmann, Assistant U.S. Attorney for the Eastern District of New York  
Madeline O'Connor, Assistant U.S. Attorney for the Eastern District of New York

## **Exhibit A**

### Questions for Discussion

#### **Related Party Transactions**

Are transactions with related parties properly documented in written contracts or agreements, and are the underlying transactions conducted at arm's length and at fair market values? Are you concerned that payments to related parties are overvalued, or that receipts from related parties are undervalued?

#### **Member Capital Transactions**

Can you explain member's capital account balances, including member contributions of cash and property, assignment of recourse and non-recourse debt obligations, and member distributions?

#### **Income Tax Restatements**

Has the 2014 restated tax return been accepted by IRS? What is the expected impact on prior and future tax filings? Explain the key issues behind the restatement notably: revenue measurement, recognition and related deferred revenue; capitalization of asset costs and related depreciation; member's capital account balances, including contributions, debt allocations and distributions.

#### **Reserves for Contingencies**

Has the company disclosed both its asserted claims (principally unresolved tax issues in the USA and Mexico, labor disputes with former employees, and challenges to the company's title to resort properties) and unasserted claims? Are these claims properly reserved for potential losses?

#### **Proforma 2016/2017 Cash Flow Projection**

What is the expected cash flow, including operating cash, capital spending, expected loan advances and repayments, bulk asset sales?

#### **Site Visit**

We would like to tour the site including but not limited to the golf courses, club houses, residential time share unit (both the completed and under construction), Crystal Lagoon, health club/spa, management offices, beachfront development sites, and any major equipment on site.

## **Exhibit B**

### **Financial Information Requested:**

- Interim monthly 2016 financial statements including profit and loss cash flow schedules for the hotel operations and golf course
- Restated Federal Income Tax Returns for all years prior to 2015
- Any and all related party contracts and agreements
- Listing of assets owned or used, where located, and related depreciation schedules
- Listing of construction in progress, including costs and timelines
- Most recent correspondence with Danske concerning loan financing and repayment, plus your plan to cover any unexpected cash shortfalls or expenditures
- Schedule of beginning loan balance, loan disbursements, principal curtailments, accrued interest and ending balances for the past two years through October 2016
- Schedule of land parcels sold by date with amounts
- Schedule of remaining inventory of land parcels available for sale with estimated fair market values